

ESTTA Tracking number: **ESTTA283635**

Filing date: **05/13/2009**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Notice of Opposition

Notice is hereby given that the following party opposes registration of the indicated application.

Opposer Information

Name	OpBiz, LLC
Granted to Date of previous extension	05/13/2009
Address	3667 Las Vegas Boulevard South Las Vegas, NV 89109 UNITED STATES

Correspondence information	Floyd A. Mandell; Breighanne A. Eggert Attorneys for Opposer Katten Muchin Rosenman LLP 525 West Monroe Street Chicago, IL 60661 UNITED STATES floyd.mandell@kattenlaw.com, breighanne.eggert@kattenlaw.com, deborah.wing@kattenlaw.com Phone:312-902-5200
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Applicant Information

Application No	77552850	Publication date	01/13/2009
Opposition Filing Date	05/13/2009	Opposition Period Ends	05/13/2009
Applicant	Lowrance, Jonas 400 S. Alton Road, #2001 Miami Beach, FL 33139 UNITED STATES		

Goods/Services Affected by Opposition


Class 035. All goods and services in the class are opposed, namely: Retail stores featuring a wide variety of consumer goods

Grounds for Opposition

Priority and likelihood of confusion	Trademark Act section 2(d)
<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
Other	No Bona Fide Intent to Use

Mark Cited by Opposer as Basis for Opposition

U.S. Registration No.	2734651	Application Date	09/30/2002
Registration Date	07/08/2003	Foreign Priority	NONE

		Date	
Word Mark	ROC BAR		
Design Mark			
Description of Mark	NONE		
Goods/Services	Class 043. First use: First Use: 2000/05/02 First Use In Commerce: 2000/05/02 Bar and lounge services		

Attachments	76453832#TMSN.gif (1 page)(bytes) RokVegas _77552850 - retail stores_ Notice of Opposition _3_.pdf (6 pages)(22159 bytes) ROKVEGASCertificateofService.PDF (1 page)(22823 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/fam/
Name	Floyd A. Mandell; Breighanne A. Eggert
Date	05/13/2009

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Applicant: Jonas Lowrance
Serial No.: 77/552,850
Filing Date: August 21, 2008
Mark: ROKVEGAS

Published in the Official Gazette on January 13, 2009

OPBIZ, L.L.C.,)	
)	
Opposer,)	
)	
vs.)	Opposition No. _____
)	
JONAS LOWRANCE,)	
)	
Applicant.)	

NOTICE OF OPPOSITION

Opposer, OpBiz, L.L.C. (“Opposer”), a Nevada limited liability company located at 3667 Las Vegas Boulevard South, Las Vegas, Nevada 89109, believes that it would be damaged by registration of the trademark ROKVEGAS (“Applicant’s Mark”) depicted in U.S. Application Serial No. 77/552,850 (the “Application”), filed on August 21, 2008 (the “Filing Date”), by Jonas Lowrance (the “Applicant”), an individual whose address of record in the Application is 400 S. Alton Road, #2001, Miami Beach, Florida 33139. Accordingly, Opposer, by and through its attorneys, hereby opposes registration of Applicant’s Mark and, as grounds for opposition, alleges as follows:

1. Opposer is the owner and operator of the Planet Hollywood Resort and Casino in Las Vegas, Nevada. Opposer purchased the property and business, now operating as the Planet Hollywood Resort and Casino, in 2003 after the Aladdin Resort and Casino (the “Aladdin Resort”) filed for bankruptcy. This transaction included a transfer of ownership to Opposer of

the Aladdin Resort's federal trademark registrations, including the ROC BAR mark (the "ROC BAR Mark"), which is registered as U.S. Registration No. 2734651 (the "Registration") in the United States Patent and Trademark Office ("USPTO") in connection with bar and lounge services.

2. Opposer owns all rights, title and interest in and to the ROC BAR Mark and Registration, which was issued on July 8, 2003. The Registration is valid, subsisting and in full force and effect.

3. Since purchasing the Aladdin Resort, Opposer has undertaken a massive, multi-year rebranding and renovation project of the business and property, requiring portions of the business branded under certain of the acquired trademarks to close temporarily. Although the rebranding and renovation process is not fully completed, the Planet Hollywood Resort and Casino is now a shopping, dining, nightlife and gambling destination in the center of the Las Vegas strip.

4. By at least as early as May 2, 2000 – long prior to the Filing Date of the Application, which is based on Applicant's intent to use Applicant's Mark – Opposer, through its predecessor-in-interest, adopted and began to use the ROC BAR Mark in connection with bar and lounge services at an establishment called the "Roc Bar" inside the Aladdin Resort.

5. During the operation of the Roc Bar, it became a well-known and popular fixture in Las Vegas nightlife. Opposer's predecessor-in-interest closed the Roc Bar in 2003, and upon Opposer's purchase of the Aladdin Resort, Opposer kept the Roc Bar closed in order to determine how the ROC BAR Mark would be utilized within the new Planet Hollywood Resort and Casino upon completion of the renovation and rebranding process. Since this time, Opposer has maintained a continuous intent to resume commercial use of the ROC BAR Mark.

6. In August 2008, Banger Brands, LLC – a limited liability corporation of which Applicant is a member – opened a bar and nightclub called “RokVegas” inside the New York New York Hotel and Casino in Las Vegas, just down the street from Opposer’s Planet Hollywood Resort and Casino. On August 21, 2008, Applicant filed the Application to register Applicant’s Mark in the USPTO on an intent-to-use basis for “Retail stores featuring a wide variety of consumer goods” in International Class 35 (“Applicant’s Goods”).

7. On August 21, 2008, Opposer notified Applicant of its objections to Applicant’s use of Applicant’s Mark, and on November 24, 2008, Opposer notified Applicant of its objection to Applicant’s Mark as depicted in the Application.

8. Opposer’s rights in the ROC BAR Mark arose prior to any alleged rights of Applicant in Applicant’s Mark.

9. Applicant seeks to register Applicant’s Mark in connection with Applicant’s Goods that are well within the natural zone of expansion of Opposer’s ROC BAR Mark.

10. “ROC” and “ROK” – the lead terms and dominant components of the parties’ respective marks – are virtually identical in appearance and phonetically identical in sound. Meanwhile, “Vegas” – the non-dominant and sole, remaining term comprising Applicant’s Mark – is merely descriptive of the geographical location (*i.e.*, Las Vegas) of the goods offered under Applicant’s Mark and, as such, creates no additional distinction from Opposer’s ROC BAR Mark. Moreover, such geographical designation serves only to further confuse the public about the parties’ respective marks since Las Vegas is where Opposer has extensively used, and intends to continue so using, its ROC BAR Mark.

COUNT I

(Likelihood of Confusion)

11. Opposer realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 9.

12. Applicant's Mark so resembles Opposer's ROC BAR Mark in sound, sight, meaning and commercial impression as to be likely, when applied to the goods identified in the Application, to cause confusion, mistake or deception by causing the public to believe that the goods offered in connection with Applicant's Mark originate from, or are otherwise sponsored or endorsed by, Opposer in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent damage to Opposer and the public within the meaning of 15 U.S.C. § 1063(a).

COUNT II

(Fraud)

13. Opposer realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 11.

14. On information and belief, Applicant committed fraud on the USPTO by making a material representation of fact in the Application which he knew, or should have known, to be false – namely, Applicant stated in his declaration filed in the Application (“Applicant’s Declaration”) that, “to the best of his/her knowledge and belief no other person, firm, corporation, or association has the right to use the mark in commerce, either in the identical form thereof or in such near resemblance thereto . . .” (“Applicant’s Misrepresentation”), despite the fact that Applicant had constructive and actual knowledge of Opposer’s ROC BAR Mark.

15. Prior to Applicant’s filing the Application, Opposer and Applicant engaged in a series of detailed discussions regarding entering into a business relationship. By virtue of those

discussions and the relationship between Opposer and Applicant, Applicant became aware of Opposer's ROC BAR Mark and past and intended future use of the same.

16. When the aforementioned negotiations between the parties terminated without any agreement reached, Applicant (through the limited liability company of which he is a member) instituted Cancellation Proceeding No. 92046206 in the USPTO against Opposer, seeking to cancel the Registration. That proceeding was dismissed with prejudice.

17. On information and belief, the USPTO relied on Applicant's Misrepresentation in approving Applicant's Mark to be published for opposition, which it would not have done had it known that Applicant's Declaration was fraudulent.

COUNT III

(No Bona Fide Intent to Use)

18. Opposer realleges and incorporates herein by reference the matters alleged in Paragraphs 1 through 16.

19. On information and belief, Applicant did not have a bona fide intent to use Applicant's Mark in connection with Applicant's Goods as of the Filing Date. Specifically, on information and belief, Applicant did not have a bona fide intent to use the unitary mark "ROKVEGAS" as of the Filing Date, but, instead, intended to use, if anything, the materially different mark "ROK VEGAS," comprised of two separate terms, the latter of which term (*i.e.*, VEGAS) is merely descriptive of a feature and location of Applicant's Goods.

REQUEST FOR RELIEF

20. For the foregoing reasons, among others, Opposer believes that it would be damaged by the registration of Applicant's Mark. Accordingly, Opposer respectfully requests that this opposition be sustained and registration of Applicant's Mark be denied.

Dated: May 13, 2009

Respectfully submitted,

/s/ Breighanne A. Eggert

One of the attorneys for Opposer

Floyd A. Mandell

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In The Matter Of
OPBIZ, L.L.C.

Serial Nos.: 77/552,850,
77/552,843 & 77/552,836

Opposer,

v.

JONAS LOWRANCE

Applicant.

CERTIFICATE OF SERVICE

I hereby certify that the following documents were served upon Michael J.
McCue, Lewis and Roca L.L.P., 3993 Howard Hughes Parkway, Las Vegas, Nevada
89169-5996 as attorney of record for applicant, Jonas Lowrance:

OpBiz, L.L.C.'s Notice of Opposition (Serial No.: 77/552,850)
OpBiz, L.L.C.'s Notice of Opposition (Serial No.: 77/552,843)
OpBiz, L.L.C.'s Notice of Opposition (Serial No.: 77/552,836)

The documents were served via U. S. mail on this 13th day of May 2009.



Deborah A. Wing, Paralegal
Katten Muchin Rosenman LLP